

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:00CR3052-3
)	
Plaintiff,)	
)	MEMORANDUM
vs.)	AND ORDER
)	
EDUARDO HINOJOSA,)	
)	
Defendant.)	

Proceeding pro se, the defendant, Eduardo Hinojosa, moves for resentencing pursuant to 18 U.S.C. § 3582(c)(2).¹ The defendant relies upon Amendment 591 (effective November 1, 2000).² I will deny the motion.

Amendment 591³ has no application to the defendant. While the defendant was convicted of a drug conspiracy and related “Pinkerton” distributions, his sentence was not enhanced because he sold drugs in a protected location or because he involved an

¹Pursuant to that law, and under certain circumstances, a judge may modify a sentence when a sentencing range that was applied to a defendant has been subsequently lowered by the Sentencing Commission.

²The defendant was sentenced on June 7, 2001, *after* Amendment 591 became effective. (Filing 161 (Judgment).)

³Summarized, Amendment 591 made clear that unless one was actually charged with and convicted of selling drugs in a protected area, or unless one was actually charged with and convicted of involving an underage or protected person in the criminal activity, the enhanced penalties of U.S.S.G. § 2D1.2 should not be applied.

underage or pregnant individual.⁴ Since the predicate for relief under Amendment 591 does not exist, he cannot obtain any relief pursuant to the Amendment.

To the extent that the defendant argues that Amendment 591 was intended to bar consideration of other enhancements like use of a dangerous weapon, role in the offense, or obstruction of justice (adjustments applied to Hinojosa), he misreads the Amendment. Given Hinojosa's offenses of conviction under 18 U.S.C. § 2, 18 U.S.C. § 846, and 18 U.S.C. § 841(a)(1), Amendment 591 does not bar the enhancements that I used to sentence him to 292 months in prison.

IT IS ORDERED the Eduardo Hinojosa's motion (filing 205) for relief under 18 U.S.C. § 3582(c)(2) is denied.

December 9, 2005.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

⁴See, for example, the Judgment, the related Statement of Reasons, and the Second Revised Presentence Report.